

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ANGELO FERNANDEZ,

Defendant.

13-CR-020-02 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On May 8, 2024, the Court issued an order finding, in agreement with the United States Probation Department, that defendant Angelo Fernandez is not eligible for a sentence reduction pursuant to Amendment 821 to the Sentencing Guidelines, which went into effect on November 1, 2023, and applies retroactively. *See* Dkt. 217.

On May 30, 2024, Fernandez, *pro se*, filed a letter which the Court construes as a motion for reconsideration of the denial of relief under Amendment 821. Dkt. 219. Fernandez's letter stated that, were he to be sentenced today, his criminal history category would be II, not III as it was at the time of sentencing, based on the expungement, effective 2022, of a New York State marijuana conviction on the basis of which Fernandez was assigned a criminal history point. *Id.*

Amendment 821, however, does not provide for a wholesale re-calculation of the Court's application of the Sentencing Guidelines as of the time of sentencing. It authorizes only a recalculation of the two discrete guideline provisions that Amendment 821 addressed and made retroactive. These were the enhancement for status points, pursuant to U.S.S.G. § 4A1.1(e), whose scope has retroactively been limited, and the reduction of offense level for defendants who had zero criminal history points at the time of sentencing. Amendment 821 does not,

however, authorize retroactively the recalculation of other aspects of the defendant's Sentencing Guideline calculation, including based on the post-sentencing expungement of state marijuana offenses. *See* USSG §1B1.10(b)(1) ("the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected."); Application Note 2 to USSG §1B1.10 ("In determining the amended guideline range under subsection (b)(1), the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.").

The Court accordingly denies Fernandez's motion for reconsideration.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: June 20, 2024
New York, New York